

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

JESS M. PHILPOT

Plaintiff

vs.

PHYSICIANS MUTUAL INSURANCE COMPANY

Defendant

NO. 76-C-60 ✓

STIPULATION OF DISMISSAL WITH
PREJUDICE

Comes now the plaintiff, through his attorney, W. M. "Bill" Thomas, and the defendant, through its attorney, Joseph F. Glass, and stipulate that the above captioned cause of action be dismissed with prejudice to filing a future action herein.

W. M. "Bill" Thomas
W. M. "Bill" Thomas, Attorney for Plaintiff

Joseph F. Glass
Joseph F. Glass, Attorney for Defendant

FILED

SEP 20 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

And now on this 20 day of September, 1976, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties heretof of dismissal, parties hereto having advised the court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, AJUDGED AND DECREED that the above styled cause be and the same is hereby dismissed with prejudice to the right of the plaintiff to bring any future action arising from said cause of action.

W. F. Barrett
Judge

50.

FRANCIS STEWART and
FLORIA W. STEWART,

vs.

Defendant.

FILE

SEP 17 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

The Court has for consideration the motion of the plaintiffs to remand, and, having carefully perused the entire file, and, being fully advised in the premises, finds:

In the petition for removal the following jurisdictional allegations are found:

"Your petitioner further states that in said suit there is a controversy which is wholly between citizens and residents of different states, and can be fully determined between them, to-wit: A controversy between the plaintiffs who, at the time of the commencement of said suit were and now are, citizens of the United States and residents of the country of Norway; and this defendant, who, at the time of the commencement of said suit, was and now is a foreign corporation, incorporated in the State of Delaware, with its principal place of business in the City of Fort Wayne, Indiana." (Emphasis supplied)

The affidavit of Murray B. Stewart, filed at the same time
the Motion to Remand was filed states, in pertinent part:

"1. That he is the brother of Francis Stewart and one of the attorneys for the plaintiffs in the above styled action and has represented the plaintiffs in their personal business affairs for many years and is well acquainted with their personal and business affairs.

"2. That of his own knowledge the taxing authorities of both the United States of America and the country of Norway for more than two years have recognized and continue to recognize that Francis Stewart and Gloria W. Stewart, plaintiffs herein are United States Citizens permanently residing and domiciled in Norway.

"3. That the plaintiffs own real estate and a house in Norway in which they live. The address is Haakon Saethres v.25, Paradis 5040 Norway.

"4. That the passports and visas of the plaintiffs show that they are residing in Norway as immigrants from the United States of America, and the plaintiff, Francis Stewart, is a full time employee and officer of a Norwegian corporation with offices in Bergen, Norway, and that the plaintiff, Gloria W. Stewart- is his wife and resides with him in Norway. ***.

The Court notes that Murray B. Stewart is a duly qualified and admitted and practicing member of this Bar and has made the sworn affidavit on file in the instant litigation.

Interrogatories were answered by Ross Hutchins and Murray B. Stewart, under oath, and additionally under objection. In pertinent part the following statements are found in said answers, all of which were made under an objection:

"3. In order to avoid further waste of time of the Court and because of delays in correspondence with the plaintiffs in Norway, the attorneys for the plaintiffs state that the sworn answers to the interrogatories will be as follows:"

Again the Court notes that both signatories are duly qualified and admitted and practicing members of this Bar and said answers are made under sworn oath.

The answers to the interrogatories reflect that plaintiffs previously resided in Ouray, Colorado, until the latter part of 1973, when they moved to Norway; that the last time they voted was in 1972 prior to their move to Norway; that they have not since voted in the United States, in person or by absentee ballot; that they own real estate in Norway in which they reside; that they have paid Norwegian income taxes for 1973, 1974, 1975 and 1975 as a resident of Norway and have received special deductions for permanent residents; that the current driver's license is Norway and expires in 1986 and an English license which expires in 1978, and shows the address of a London attorney for the Norwegian employer; that he is employed by Norse Petroleum A.S. in Norway and has an employment contract until his retirement age in 1982 and both plaintiffs are qualified for retirement benefits under the Norwegian government equivalent of Social Security and receive free medical care provided by Norway;

that plaintiffs plan to remain in Norway indefinitely; that they have returned to the United States on various occasions on business trips and/or vacations; while they do own some property in the United States under control of diverse individuals and have some bank accounts in the United States, their principal bank account is in Norway and the bank accounts are maintained in the United States principally for the purpose of use of United States Dollars. The other statements contained in said answers to interrogatories are of the same vein lending credence to the facts and contentions propounded by the plaintiffs on the Motion to Remand.

In Moore's Federal Practice, Volume 1A ¶0.161[1] it is stated:

"It is possible to be a citizen of the United States, but not of any one of the states."

In Hernandez v. Lucas, 254 F.Supp. 901 (USDC S.D.Tex. 1966) the Court said:

"***a citizen of the United States who acquires a domicile in another country is neither a citizen of any State nor an alien, and may not sue or be sued in Federal Court on the basis of diversity of citizenship."

In its Response filed September 13, 1976, the defendant states:

"As was stated in the previous response, defendant will concede lack of jurisdiction if it can be shown that the plaintiffs have no substantial connection with any of the states and have no present intention of returning to the same."

Based on the entire file the Court concludes that plaintiffs' Motion to Remand should be sustained.

IT IS, THEREFORE, ORDERED that plaintiff's Motion to Remand be and the same is hereby sustained and this cause of action and complaint be and the same are hereby remanded to the District Court in and for Tulsa County, Oklahoma.

ENTERED this 17th day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY T. STEPHENSON and
KATHRYN B. STEPHENSON,

Defendants.

CIVIL ACTION NO. 76-C-432-C ✓

FILED

SEP 17 1976

JUDGMENT OF FORECLOSURE

Jack C. Silver, Clerk
U. S. DISTRICT COURT

THIS MATTER COMES on for consideration this 17th
day of September, 1976, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; and the Defendants,
Billy T. Stephenson and Kathryn B. Stephenson, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Billy T. Stephenson and
Kathryn B. Stephenson, were served with Summons and Complaint
on August 24, 1976, as appears from the United States Marshals
Service herein.

It appearing that the Defendants, Billy T. Stephenson
and Kathryn B. Stephenson, have failed to answer herein and
that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based
upon a mortgage note and foreclosure on a real property mortgage
securing said mortgage note upon the following described real
property located in Tulsa County, Oklahoma, within the Northern
Judicial District of Oklahoma:

Lot Seventeen (17), in Block Seven (7), NORTHGATE
2ND ADDITION to the City of Tulsa, Tulsa County,
Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Billy T. Stephenson and Kathryn B.
Stephenson, did, on the 30th day of September, 1972, execute
and deliver to the Administrator of Veterans Affairs, their
mortgage and mortgage note in the sum of \$11,500.00 with 4 1/2

percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Billy T. Stephenson and Kathryn B. Stephenson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$10,940.82 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from February 1, 1976, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Billy T. Stephenson and Kathryn B. Stephenson, in personam, for the sum of \$10,940.82 with interest thereon at the rate of 4 1/2 percent per annum from February 1, 1976, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and

foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.


UNITED STATES DISTRICT JUDGE

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

RAYMOND L. WELLS, Individually,
and JOANNA WELLS, Individually,

Plaintiffs,

vs.

ROBERT J. SMITH, Administrator
of the Estate of CYNTHIA A. SIMMS,
deceased,

Defendants.

NO: 76-C-96

FILED

SEP 17 1976

ORDER

Jack C. Silver, Clerk
U. S. DISTRICT COURT

On this 17th day of September, 1976, came on before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, the parties' application for dismissal with prejudice. The Court, upon due consideration, finds that all issues between the parties have been resolved and that the above styled matter should be dismissed with prejudice to the rights of bringing of future action.

It is therefore, ORDERED, ADJUDGED, and DECREED, that the above styled action is hereby dismissed with prejudict to the right of bringing of future action.

18/H Dale Cook
JUDGE OF THE UNITED STATES DISTRICT COURT

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 74-C-307

Willie E. Burnett, as Administrator of
Estate of Arlie J. Burnett, deceased,
Plaintiff,

vs.

Transworld Airlines, Inc., and
William H. Hilton,
Defendants.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Allen E. Barrow
, United States District Judge, presiding, and the issues having been duly tried and
the jury having duly rendered its verdict, for the Plaintiff.

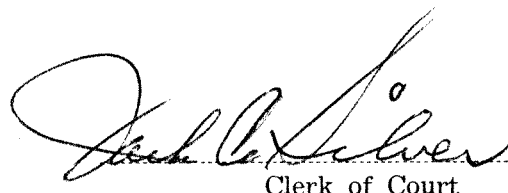
It is Ordered and Adjudged that having found in favor of the Plaintiff
and against the Defendants damages are assessed in the amount of
\$2,000.00 and punitive or exemplary damages in the amount of
\$30,000.00, and costs.

F I L E D

SEP 16 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Dated at Tulsa, Oklahoma, this 15th day
of September, 1976.


Clerk of Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 76-C-193-B

C. FRED STITES, SUE A. STITES,
WILLIAM GREGORY DUNHAM, FIRST
FEDERAL SAVINGS AND LOAN
ASSOCIATION OF COFFEYVILLE, a
Corporation, ROY L. THOMASON,
AVIS A. THOMASON, A. T. MINICH,
HAZEL ATOHA, TULSA HOUSING
AUTHORITY OF THE CITY OF TULSA,
GILBERT SEXTON, WANDA SEXTON,
EDITH PANKEY RHODES, NATALIE
DEIRUP FERRELL, RITA GILSTRAP
MILLER, CLAUDE L. GOLTRA, and
AILEEN GOLTRA,

Defendants.

FILED

SEP 16 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 16th
day of September, 1976, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; and the Defendants,
A. T. Minich and Hazel Atoha, now Minich, appearing by their
attorney, R. L. Davidson, Jr., and the Defendant, Tulsa Housing
Authority of the City of Tulsa, appearing by its attorney,
Robert S. Rizley, and the Defendants, C. Fred Stites, Sue A.
Stites, William Gregory Dunham, First Federal Savings and Loan
Association of Coffeyville, a Corporation, Roy L. Thomason,
Avis A. Thomason, Gilbert Sexton, Wanda Sexton, Edith Pankey
Rhodes, Natalie Deirup Ferrell, Rita Gilstrap Miller, Claude L.
Goltra, and Aileen Goltra, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Sue A. Stites, William
Gregory Dunham, Gilbert Sexton, Wanda Sexton, Natalie Deirup
Ferrell, and Rita Gilstrap Miller, were served by publication
as shown on the Proof of Publication filed herein; that Defendant,

C. Fred Stites, was served with Summons, Complaint, and Amendment to Complaint on May 7, 1976, and May 24, 1976, respectively; that Defendant, Tulsa Housing Authority of the City of Tulsa, was served with Summons, Complaint, and Amendment to Complaint on May 10, 1976, and May 19, 1976, respectively; that Defendant, First Federal Savings and Loan Association of Coffeyville, a Corporation, was served with Summons, Complaint, and Amendment to Complaint on May 11, 1976, and May 20, 1976, respectively; that Defendants, Roy L. Thomason and Avis A. Thomason, were served with Summons, Complaint, and Amendment to Complaint on May 11, 1976, and May 19, 1976, respectively; that Defendants, A. T. Minich and Hazel Atoha, now Minich, were served with Summons, Complaint, and Amendment to Complaint on May 19, 1976, and June 16, 1976, respectively; that Defendants, Claude L. Goltra and Aileen Goltra, were served with Summons, Complaint, and Amendment to Complaint on May 19, 1976; and that Defendant, Edith Pankey Rhodes, was served with Summons, Complaint, and Amendment to Complaint on June 7, 1976; all as appears from the United States Marshal's Service herein.

It appearing that the Defendants, A. T. Minich and Hazel Atoha, now Minich, have duly filed their Disclaimer herein on May 26, 1976; that Defendant, Tulsa Housing Authority of the City of Tulsa, has duly filed its Disclaimer herein on June 10, 1976; and that Defendants, C. Fred Stites, Sue A. Stites, William Gregory Dunham, First Federal Savings and Loan Association of Coffeyville, Roy L. Thomason, Avis A. Thomason, Gilbert Sexton, Wanda Sexton, Edith Pankey Rhodes, Natalie Deirup Ferrell, Rita Gilstrap Miller, Claude L. Goltra, and Aileen Goltra, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-One (21), Block Eight (8), in SHARON HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT James C. Brewer and Loveta Sue Brewer did, on the 29th day of March, 1968, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,350.00 with 6 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, William Gregory Dunham, was the grantee in a deed from James C. Brewer and Loveta Sue Brewer, dated October 18, 1969, filed October 20, 1969, in Book 3906, Page 149, records of Tulsa County, wherein Defendant, William Gregory Dunham, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, C. Fred Stites and Sue A. Stites, were the grantees in a deed from James C. Brewer and Loveta Sue Brewer, dated March 13, 1970, filed March 16, 1970, in Book 3919, Page 1068, and an Agreement Creating Liability to Holder and to United States, dated March 25, 1970, wherein C. Fred Stites and Sue A. Stites assumed and agreed to pay the mortgage note and mortgage being sued upon herein.

The Court further finds that Defendants, William Gregory Dunham, C. Fred Stites, and Sue A. Stites, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,233.75 as unpaid principal with interest thereon at the rate of 6 percent per annum from June 29, 1975, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, William Gregory Dunham and Sue A. Stites, in rem, and C. Fred Stites, in personam, for the sum of \$9,233.75 with interest thereon at the rate of 6 percent per annum from June 29, 1975, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, First Federal Savings and Loan Association of Coffeyville, Roy L. Thomason, Avis A. Thomason, Gilbert Sexton, Wanda Sexton, Edith Pankey Rhodes, Natalie Deirup Ferrell, Rita Gilstrap Miller, Claude L. Goltra, and Aileen Goltra.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EDDIE L. JOHNSON, et al.,

Plaintiffs,

vs.

RICHARD WARD, et al.,

Defendants.

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FILED

SEP 15 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration the various motions filed by the defendants; the Findings and Recommendations of the Magistrate; the Objections filed by the plaintiffs to Findings and Recommendations of the Magistrate, and, having carefully perused the entire file, and, being fully advised in the premises, finds:

The Court first notes the contention of defendants that plaintiffs have not complied with Rule 34(d) of the Rules for the United States District Court for the Northern District of Oklahoma, effective March 1, 1973, which provides, in pertinent part:

" ***In all other cases filed in this Court, the United States Magistrate shall file his reports and recommendations with the Clerk of the Court. Any party aggrieved by said report and recommendation may petition the Court to set them aside, and enter an order on his behalf. Such a petition shall be filed promptly, and in any event within ten days after the report and recommendations are filed with the Clerk and shall be accompanied by a brief which sets forth with particularity the grounds therefor. A proposed order shall accompany said petition. Any objections not so made shall be deemed waived and the Court will enter such order as it may deem to be appropriate."

The Court notes that plaintiffs have not complied with this rule. Nevertheless, the Court has reviewed the entire file and carefully perused all of the pleadings in the instant litigation.

The Court finds that the Findings and Recommendations of the Magistrate are not clearly erroneous and adequately and properly state the facts involved in the instant litigation and the applicable law.

The Court, therefore, adopts and affirms the Findings and Recommendations of the Magistrate and overrules the Objections filed by the Plaintiffs.

Based on the Findings and Recommendations of the Magistrate, IT IS ORDERED that the Motion to Dismiss be and the same is hereby sustained, as to the defendants, Richard Ward, Jack Freeman, The State of Oklahoma ex rel Department of Public Highways, and said cause of action and complaint are dismissed as to Richard Ward, Jack Freeman, The State of Oklahoma, ex rel Department of Public Highways.

IT IS FURTHER ORDERED that the Motion for Summary Judgment filed by the defendant, Prarie Construction Company be and the same is hereby sustained.

IT IS FURTHER ORDERED that the Findings and Recommendations of the Magistrate are affirmed and adopted by the Court.

IT IS FURTHER ORDERED that the Objections to Findings and Recommendations of the Magistrate filed by the plaintiff be and the same are hereby overruled.

ENTERED this 15th day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOHN T. DUNLOP, Secretary
of Labor, United States
Department of Labor,

Plaintiff,

vs.

AGRICO CHEMICAL COMPANY,

Defendant.

Civil Action
No. 74-C-417

FILED

SEP 15 1976

REPORT OF SPECIAL MASTER Jack C. Silver, Clerk
U. S. DISTRICT COURT

In compliance with the Order of the Court made and entered on the 14 day of January, 1976, appointing Ainslie Perrault, Jr., Special Master to hear evidence in the above styled cause.

Mr. Heriberto De Leon appeared as Counsel for the Plaintiff. The firm of Hall, Estill appeared for the Defendant and was represented by Mr. William D. Nay.

This is an action brought by the Secretary of Labor under the Age Discrimination and Employment Act of 1967, (ADEA), (29 USC § 621 et seq.), arising out of the termination of two of the Defendant's former employees, to wit: Mr. Tom Hill and Mr. Ralph L. Willits.

There is no dispute that both Messrs. Hill and Willits were, at the time of their terminations, within the age group protected by ADEA, that is, between the ages of 40 and 65 years.

Mr. Hill had been employed as a Salesman of fertilizer and turf and garden professional lines in the State of Virginia, and was terminated on October 31, 1972. Mr. Willits had been employed by Defendant in an administrative capacity. His last position was Coordinator of Pricing in the marketing staff services department in the Defendant's home office and he was terminated on February 28, 1973.

In the interest of clarity, it will be necessary to discuss each of the two causes separately.

The first witness to testify was Mr. A. Tom Hill. He testified that he was born on July 27, 1913, and started to work for Agrico on September 15, 1960. He gave a brief history of the Company and its transition from the time when Conoco acquired it in 1963 until it was acquired by the Williams Companies in 1972. Mr. Hill testified that the process of his termination began on August 4, 1972, when he was contacted by Mr. W. D. McMains, who asked him to meet with him in Norfolk, Virginia on August 7, 1972. At that meeting, which lasted approximately 15 minutes, Mr. Hill was informed that he was being terminated from the Company because his present sales territory, which consisted of Virginia, was being divided up and combined with other territories from other states. He further testified that Mr. McMains questioned his ability to handle increased travel, necessitated by the expanded territory, because of his age. He went on to testify that he had had a physical check-up three or four months prior to that time; that he was in perfect health; and, in addition thereto, that he had been driving between 800 and 1,000 miles per month.

He testified that on either that night (August 7, 1972), or the next night, he went to Emporia, Virginia for a turf meeting. There he met Mr. Guss Constantino, who owned Wilson Feed Company, a major customer of Mr. Hills. Mr. Constantino was very concerned because a representative of Agrico was attempting to sell a certain line of products which Mr. Constantino described directly to one of his retail customers. Mr. Hill testified that he later went home and called Mr. Norman Cockman, his former supervisor, and informed him of what had happened. Mr. Cockman told him he should look into the age discrimination aspect of the termination. At this time Mr. Hill contacted Mr. William W. Jones,

his attorney, and asked him to look into the matter.

The next day Mr. Hill, Mr. McMains and Mr. Jordan (the salesman who replaced Mr. Hill) went to call on Mr. Constantino. Mr. Constantino was informed that Agrico was splitting their two lines of products; that the traditional line would still be handled through distributors, but that the turf and garden line would be sold direct by Agrico. Mr. Hill testified that at this meeting Mr. McMains said that Mr. Hill was being terminated due to his age because he couldn't stand the rigors of travel. Thereafter, Mr. Hill had a call from Mr. McMains to meet him at National Airport at Washington, D.C. on August 19, 1972. On that date, Mr. McMains said he had made a mistake by not offering him a new position with the Company and told him he would have a sales job in Pennsylvania. Mr. Hill replied that it was a little late because his wife had signed a contract to teach the next year in their home town. Thereafter, on August 31, 1972, Mr. Hill got a telephone call from Florida advising him to continue with his work. Mr. Hill received his last check that paid him through October 15, 1972.

Mr. Hill testified that after his termination he worked for Southern States Co-Op from December, 1972 to September, 1973 for approximately \$10,000.00 per year. Further, from December, 1973 until the time of trial, he has been working for the State of Virginia and earning between \$11,000.00 and \$12,000.00 per year.

Mr. Guss Constantino next testified for the Plaintiff. He testified that he is President of Wilson Feed and Seed Company; that Tom Hill was an excellent salesman and that Mr. Hill had educated him in the fertilizer business. Mr. Constantino further testified that he had learned of Mr. Hill's termination at the Turf-Grass Association Meeting in 1972 but that no official of the Williams Companies ever told him that Mr. Hill had been terminated because of his age.

Mr. Constantino testified that in his opinion Mr. Hill was a valuable salesman because he knew every politician in Virginia and, therefore, could get many State orders in the commercial line of fertilizer. He further testified that Mr. Hill was terminated about the time Agrico began to expand and push the traditional line of fertilizer with new marketing concepts.

Plaintiff's Exhibit 3 "A" is the deposition of Winfield Hill, Mr. Tom Hill's brother, taken on May 15, 1975, in the Federal Building in Richmond, Virginia. Said deposition was introduced without any objection from the Defendant. A brief summary of Mr. Hill's testimony is that his brother called him the night before he was to meet with Mr. Bill McMains of Agrico at National Airport at Washington, D.C., on Saturday morning, August 19, 1972. He testified there was no conversation with his brother about the meeting that was to be had; that he was not asked to go there in order to be a witness; that he possibly wouldn't have gone if that had been the request. He testified that they arrived at the airport and met Mr. McMains for breakfast shortly after 8:00 o'clock A.M. That Mr. McMains stated that he had come there to see Tom Hill face to face and to offer him a job in Pennsylvania. That no specifics of the job in Pennsylvania were requested by Tom Hill. That the meeting lasted approximately 1-1/2 hours, and, after leaving and on the way back to Virginia, the only conversation between Tom Hill and his brother was concerning his Mrs. Tom Hill's teaching contract that would be difficult to breach. He testified there was no further conversation of what the job would entail, the salary or the territory or location.

The next deposition to be introduced by the Plaintiff was Exhibit 3 "B", that of Mr. Edward H. Isbell, Jr. taken on the same date as the aforementioned deposition. Mr. Isbell stated that he was employed by the Commonwealth of Virginia in the Virginia Energy Office. He stated that while he was

employed by the fertilizer inspector division of the Agriculture Department of the State of Virginia, and before moving over to the Energy Office, that Agrico was one of the top six companies selling specialty fertilizer within the State. He further defined "Specialty fertilizer" as all fertilizer not being used to grow commercial crops. He testified that the State of Virginia required a monthly reporting from each company as to the tonage of fertilizer sold within the State. That to his best knowledge, between 1964 and 1972, the tonage of Agrico increased every year and that Mr. Hill was the only salesman for Agrico within the State of Virginia. He testified he heard of Mr. Hill's termination from Mr. Hill himself or from Norman Cockman who was previously employed by Agrico in a managerial position within the State of Virginia.

The next evidence introduced were Plaintiff's Exhibits 4 "A" and 4 "B", the depositions of M. B. Brooks and the deposition of William W. Jones, taken in Mr. Jones office on May 16, 1975. Mr. Brooks testified that he was associated with E. A. Harper & Company, located in Newport News, Virginia. He testified that he had been in the fertilizer business for over 60 years with the same company and had known Mr. Hill ever since he had entered the fertilizer business many years ago with Swift Company. That Mr. Hill was a great salesman and a great asset to him in his business and that he was very sorry to hear when Mr. Hill was terminated because of all the help he had given him. He testified that on August 10, 1972 he learned that some of their dealers were being called on directly by Agrico salesmen to sell the traditional line of fertilizers. That, thereafter, he called Mr. Farmer, head of Agrico in Tulsa, and was told that someone would be in his office at 2:00 o'clock that afternoon. That afternoon, at 2:00 o'clock, Mr. Hill, Charlie Gordan and Bill McMains came to his office to discuss the situation. He further stated that

Mr. Hill made the comment that he was let out to pasture because he was considered too old and that in his best opinion thought Mr. McMains heard this comment and responded to it in a general way by saying that the new merchandising program was a long-range plan. When asked on cross-examination whether Mr. Brooks had ever heard anyone state to Mr. Hill that he was too old for the job he simply stated "No", however, it was not disputed when Mr. Hill mentioned it.

In the deposition of William W. Jones, he stated that he was an attorney and he was presently the City Attorney for the City of North Suffolk but had formerly been in private practice and represented Mr. Hill and that he had attended one meeting October 21, 1972 that representative being Mr. Bailey. That after breakfast was over Mr. Bailey told Mr. Hill that he was being terminated and requested his car. That Mr. Hill said that that was terribly short notice to which Mr. Bailey replied that he had been told in August of termination.

At page 43 of the deposition:

Q Going back to your opinion as to the reason for his termination, do you care to develop that further?

A I had the feeling, the best way to describe it, well, here is an old horse that has served his master, and is being let out to pasture, and the pasture is not being provided, and the horse's shoes are being removed. Now, that is right descriptive, but it is the way I felt, - a man that had been working with the company a long time, that I knew had a vast number of friends throughout Tidewater, Virginia, and that is the coastal area from the Atlantic Seaboard to the middle or central part of the state, and runs on into North Carolina. It is the tidal lands, where the tidewaters come into the rivers and harbors, and I knew that he had numbers and numbers of friends throughout that area, and I knew that he had given long hours of service to the

company, and I had observed him from time to time, and here, at an age when he was approaching retirement, he was being terminated with the company, and in a rather harsh manner, I thought, not even allowing him to keep his automobile. I would have thought that was a little thing that was being done, and it was abrupt and harsh, and I got the definite impression that it was not the sort of thing I thought good companies would do.

Q Is your analogy or metaphor about the horse being let out to pasture related to pension or benefits of retirement?

A Yes, I felt definitely it was related to the idea that he was approaching retirement age. I got that impression, and if you ask me what words were said about it, I would have to say there weren't any, and yet, I had the very definite feeling, because the whole context was reorganization in the company, and employees of longstanding were being released, and not just Mr. Hill, perhaps others too. Of course, I don't know the ins and outs of business from an economic standpoint, why they had to do it, but I could sort of read between the lines, and that is what I was doing.

He testified that August 9, 1972 was the first time that he had learned of Mr. Hill's termination because he dropped by Mr. Hill's house to follow-up on a request that he investigate the Age Discrimination Act for Mr. Hill.

At page 50 of the deposition:

Q Was the age of Mr. Hill included in this conversation that you had on October 21st?

A No, I don't think any direct mention was made of his age. I am sure it wasn't.

Q You stated that Mr. Bailey said something to the effect that there were a lot of people, long-time employees, being let go. I don't know what he said a lot, but a reorganization was going on within the company, and that there were a number of personnel that would be terminated.

Q Was that in the context of a conversation concerning Tom's long employment with the company?

A I don't recall what immediately preceded the remark, if that is what you mean. It was a part of the general discussion that was taking place, and I don't believe I could comment further on that and be sure of myself.

Plaintiff's Exhibit No. 5, the deposition of Mr. Ivan Mothershead was taken on the 17th day of July, 1975 at Savannah, Georgia.

Charles L. Mothershead was deposed and he testified that he had been in a high management position with Agrico before it was sold to the Williams Companies and for a short time thereafter and that Mr. Hill reported to a Mr. Norman Cockman who reported to him. He reiterated facts previously stated by other witnesses that Mr. Hill was an excellent salesman and that he increased his sales every year even though the logistics of doing so was very difficult; and that he first learned of Mr. Hill's termination from the Company in August of 1972. Thereafter, the witness testified he talked to Tom Bailey with Agrico and pointed out to him after he had advised Mr. Hill in August he pointed out to Mr. Bailey in September about the Age Discrimination Act and Mr. Bailey said he was not aware of it. He further asked Mr. Bailey if he could find a position with the Company for Mr. Hill at the Wakefield Plant as Manager. Mr. Bailey said that he would have to check it out with the person in charge with that Division. The witness then testified that he felt that this was why Mr. Hill was kept on for the other month to see if another position could be worked out for him.

At page 50 of the deposition, the following was asked:

Q Has anyone ever made any statement to you Sir that the reason for Tom Hill's termination was because he was too old?

At the top of page 51:

A No Sir.

He also stated that he doubted very seriously if Mr. Hill's territory was profitable to the Company as a result of the logistics previously discussed.

Plaintiff's exhibit No. 6, the deposition of Norman Cockman. The evidence is cumulative as to the abilities of Mr. Hill as a salesman. He was regarded by Mr. Cockman to be an excellent salesman, however, he was considered to be sloppy with his office work. Mr. Cockman further testified that he is presently working for Agrico and became acquainted with Mr. Hill in 1962 when he was transferred to the Norfolk division. He testified that the turf and garden division, which Mr. Hill was selling, was organized in 1972, and was previously testified to by the other witnesses. He testified that he asked Mr. Hill to sell his product in Western Virginia and a little bit further north because he felt the volume of sales weren't good enough in that area to support a salesman and that Mr. Hill would have to deal on a substantially larger volume if he were to provide for his own security. He further testified as to the call he received from Mr. Hill shortly after Mr. Hill's conversation with Mr. McMains and Mr. Cockman informed him that Congress had passed a law in the last year making it illegal to discriminate because of age.

Mr. Thomas Baylie testified on behalf of the Defendant that Mr. Hill ranked low in professional sales because of his territory and that in his opinion age had no effect as to whether as to any decisions as to terminate Tom Hill. That the only question that age came up was the fact that they presupposed that Mr. Hill would not want to move because of his age to another territory. After that, Mr. Bill McMains testified that he was the national sales manager in July of 1972 for Agrico and that he reorganized territories for Agrico and looked at territories

from an economic point of view. He testified that he supervised Hill in that his territory was the State of Virginia; that on August 7, 1972 they decided to broaden the scope of territorial coverage and they decided to move Mr. Charlie Jordan in to take over part of Mr. Hill's territory because he was a more productive salesman and they would also be reducing the personnel. He testified that at the meeting at the Washington Airport that he said that he had made a personal decision for Mr. Hill in not offering the Pennsylvania territory in that he felt that Mr. Hill would not be willing to move and that he thought he should offer him the territory to see if he would be willing to move at this time. He said that age, in no way, related to his decision to fire Mr. Hill but that it did weigh in his decision whether he would accept the territory in Pennsylvania. He testified that on August 9, 1972 was the first time he had learned of Mr. Hill's termination because he dropped by Mr. Hill's house to follow-up on a request that he investigate the Age Discrimination Act for Mr. Hill.

The foregoing is a brief summary of the evidence presented and introduced that this Special Master feels is relevant to the issues regarding A. Tom Hill.

The Defendant has raised two jurisdictional defenses; the first concerns the sufficiency of conciliation by the representative of the Secretary of Labor. The other is that the Secretary of Labor failed to publish the authority of the Regional Solicitor to authorize suit under ADEA. This writer would recommend that these two defenses be overruled under the facts and circumstances of the case. Mr. Speers of the Department testified that there were numerous attempts to work out and settle these cases and this was as much as admitted by the Defendant's witnesses. With regard to the second defense; the case of Wertz v. Atlantic States Construction Co. 357 F2d 442 (1966) shows this defense to be without merit.

The next question is, based on the evidence adduced at trial, whether age in any way was a factor, no matter how slight, in the Defendant's decision to terminate Mr. Hill. This is so even though the need to reduce the employee force generally was also as strong, and even perhaps a compelling reason Largsen v. Anacorda Company 510 F2d 307, 317 (C.A. 6, 1975).

This Special Master, after hearing the evidence and observing the demeanor of the witnesses is faced with the problem of, quite simply, whom to believe.

Mr. Hill testified unequivocally that at the meeting of August 7, 1972 with Mr. Bill McMains that Mr. McMains questioned his ability to handle increased trouble due to his age. Mr. McMains just as unequivocally denies this. He states that at no time during the first meeting did he mentioned age to Mr. Hill. And the only reason for the second meeting was that he felt that he had made a personal decision for Mr. Hill by not offering him another position with the Company somewhere else. He felt this was because he was aware of how long Mr. Hill had resided in Virginia and felt he would be reluctant to move and that this is the only possible way age played any part in the termination and this was not involved in the decision making process; only in the offering of a new position. Mr. Constantino testified that at no time did he hear a representative of Agrico mention age as a reason for Mr. Hill's termination and as a matter of fact the only time he heard it was when it was brought up by Mr. Hill.

Norman Cockman and Mr. Hill both testified that on August 7th or 8th Mr. Hill first learned of the Age Discrimination Act and at this point Mr. Hill contacted Mr. Wilson his lawyer.

From this point on, every meeting that was between Agrico and Mr. Hill was attended by Mr. Hill and another person of Mr. Hill's choosing.

It is unrefuted by the testimony and exhibits that were introduced into evidence that Agrico was undergoing a major mar-

keting reorganization.

Therefore, based on the facts and exhibits introduced at trial, it appears that the Age Discrimination Act only became a factor in the case after Mr. Hill learned about it and thereafter attempted to build a case.

Mr. Hill was not replaced by another person but rather his territory was combined with a more profitable territory that was already being worked by a Mr. Charles Jordan, a productive salesman.

This Special Master urges the Court to find that age in no way played a part in the decision to terminate Mr. A. Tom Hill.

The other Plaintiff, Mr. Ralph Willits, testified that he went to work for Agrico in 1938. Mr. Willits came to Tulsa in 1971 to work in the accounting office. In July, 1972 Agrico and Williams Chem. Co. merged and Mr. Willits became price coordinator. His responsibilities included coordinating pricing between all regions making certain that Agrico's pricing conformed with Governmental regulations. This was a very important function during the merger between Williams Chem. Co. and Agrico. After the merger, however, it was determined by management that Mr. Willits job could be easily combined with that of supply coordinator. Mr. Willits was then terminated on February 28, 1973. From the evidence it is unfuted that Mr. Willits was the oldest man in his section to be terminated, however, there is absolutely no evidence that this was the reason for his termination.

It appears, from the evidence, that the Government takes the position that Mr. Willits job was very necessary. However, on the other hand, no other person was ever hired to fill Mr. Willits position.

Further, there is absolutely no evidence before this

Special Master of the slightest mention of age in the termination of Mr. Willits.

It is clear from all the case law that if age had played any part, however insignificant, in the termination of Mr. Willits then he should be entitled to recover.

This Special Master does not believe that the mere fact that Mr. Willits was the oldest person in his section to be terminated is sufficient to sustain this burden of proof because of the reorganization that was going on within the company and the need for Agrico to reduce its work force in order to reflect more profit.

Therefore it is the recommendation of this Special Master that the Court find that age in no way played a part in the termination of Mr. Willits, Largsen v. Anacorda Company, supra.

Ainslie Perrault, Jr.
311 Philtower Building
Tulsa, Oklahoma 74103


Ainslie Perrault, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AIR-EXEC,
An Oklahoma corporation,

Plaintiff,

vs.

TWO-JACKS, INC.,
A Tennessee Corporation,
and JACK ADAMS,

Defendants.

75-C-489-B ✓

FILED

SEP 14 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration the Motion for New Trial filed by the defendants and the Motion to Alter and/or Amend Judgment, the response of the plaintiff thereto, and, having carefully perused the entire file, and, being fully advised in the premises, finds:

That said Motion should be overruled.

IT IS, THEREFORE, ORDERED that the Motion for New Trial filed by the defendants and the Motion to Alter and/or Amend Judgment filed by the defendants be and the same are hereby overruled.

ENTERED this 14th day of September, 1976.

Allen F. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACKY RAY HARPER, by and through)
her next friend, Rosetta Mae Harper,)
)
Plaintiff,)
)
vs.)
)
THE UNITED STATES OF AMERICA,)
PRUDENTIAL INSURANCE COMPANY,)
and THELMA T. HUNDLEY,)
)
Defendants.)

No. 76-C-80-B ✓

FILED

SEP 13 1976

JOURNAL ENTRY OF JUDGMENT

Jack C. Silver, Clerk
U. S. DISTRICT COURT *SA*

This cause coming on for hearing and the Court being fully
advised in the premises finds as follows:

1. The plaintiff herein on the 24th day of February, 1976,
filed his complaint against the defendants, The United States
of America, Prudential Insurance Company, and Thelma T. Hundley.

2. On March 22, 1976, defendant Prudential Insurance Com-
pany filed its answer and counter-claim for interpleader wherein
it admitted the obligation evidenced by the insurance policy on
which plaintiff's claim is based and prayed that it be ordered
to pay the proceeds of such insurance policy into court to be
disbursed as ordered by the Court.

3. By stipulation entered into and filed in the court on
the 30th day of April, 1976, The United States of America was
dismissed as a party defendant in this proceeding.

4. The plaintiff herein is a resident of Bartlesville,
Washington County, Oklahoma, and defendant Prudential Insurance
Company is a corporation organized and existing under the laws
of the State of New Jersey, having its principal office and place
of business in the City of Newark, New Jersey. Defendant Thelma
T. Hundley is a resident of the City of Little Rock, and a
citizen of the State of Arkansas. The Court has jurisdiction
of this matter by reason of diversity of citizenship and pursuant

to 38 U.S.C. §775. Defendant Thelma T. Hundley was served by a United States Marshal with a copy of the summons herein together with a copy of plaintiff's complaint on the 26th day of February, 1976. Defendant Thelma T. Hundley does not contest the jurisdiction of the Court; and on July 9, 1976, counsel entered his appearance on behalf of the said defendant.

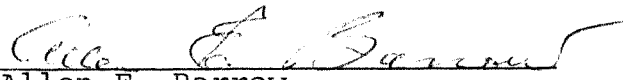
5. Defendant Prudential Insurance Company has moved the Court for an Order of Interpleader, which Order the Court has issued. By such Order the said defendant Prudential Insurance Company has been ordered to, and it has, paid into the Court the entire proceeds of the aforesaid insurance policy on the life of Henry Lee Harper, deceased, and said defendant has been discharged from further liability.

6. Plaintiff and defendant Thelma T. Hundley have entered into a settlement agreement pursuant to which, in consideration for the payment to said defendant of the sum of \$3,000.00, defendant Thelma T. Hundley has renounced any further interest in the proceeds of the aforesaid insurance policy and in any other funds of any nature whatsoever of said decedent Henry Harper. The Court finds such agreement to be a reasonable and proper settlement.


7. Defendant Thelma T. Hundley through her counsel has informed the Court that pursuant to the aforesaid agreement all the allegations of the complaint of the plaintiff will be confessed and taken as true.


8. It is therefore found by this Court as follows: The allegations of the complaint, including an amendment thereto, are found to be true and correct in all respects. This Court has jurisdiction of this matter. Plaintiff is the child of the insured decedent Henry Lee Harper and plaintiff has a claim superior to that, if any, of defendant Thelma T. Hundley.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the settlement agreement entered into between plaintiff and defendant Thelma T. Hundley should be and is approved, that the claim of plaintiff to such sum is superior to the claim, if any, of defendant Thelma T. Hundley, that the said plaintiff is entitled to the proceeds, plus interest, of the aforesaid insurance policy less the payment to defendant Thelma T. Hundley of the sum of \$3,000.00, and that in order to effectuate the aforesaid settlement agreement the Clerk of the Court should be and is hereby directed to pay over all funds on deposit herein to Rosetta Mae Harper as next friend of Jacky Ray Harper.


Allen E. Barrow
United States District Judge

Approved:


P. Thomas Thornbrugh
Attorney for defendant
Thelma T. Hundley


Frank Gregory
CHAPEL, WILKINSON, RIGGS & ABNEY
Attorneys for plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

POLLY SUTTERFIELD,

Plaintiff,

vs.

MUNSINGWEAR, INC.,

Defendant.

No. 76-C-151-C ✓

FILED

SEP 10 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITHOUT PREJUDICE

This cause comes on for hearing this 10th day of September, 1976,
upon joint application by the parties for dismissal without prejudice, and the
Court, having reviewed the application and being duly advised herein, finds
that said cause should be in the same as hereby dismissed without prejudice.

W. Dale Book
JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PEABODY COAL COMPANY,

Plaintiff,

vs.

LOCAL UNION NO. 1593, UNITED
MINE WORKERS OF AMERICA and
LOCAL UNION NO. 1100, UNITED
MINE WORKERS OF AMERICA,

Defendants.

76-C-470-B

FILED

SEP 10 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Now, on this 10th day of September, 1976, there comes on before me, the undersigned Judge in and for the United States District Court for the Northern District of Oklahoma, the Verified Motion to Dismiss of the Defendants herein.

The Court, having considered the said Motion to Dismiss and being fully advised in the premises, finds that the relief requested therein should be granted.

IT IS, THEREFORE, ORDERED that the Temporary Restraining Order and Order to Show Cause, in the above entitled cause be dismissed and that the security posted by the Plaintiff herein be exonerated and returned to the Plaintiff.

This Order issued at 10:00 o'clock AM on the 10th day of September, 1976.

Allen E. Barrow
ALLEN E. BARROW, Judge
United States District Court,
Northern District of Oklahoma

And Cause of
Action & Complaint

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WENDELL VERNON VAVRA,)
)
Petitioner,)
)
vs.) No. 76-C-116-C
)
STATE OF OKLAHOMA, and)
MACK H. ALFORD, Superintendent,)
Vocational Training Center, et al.,)
)
Respondents.)

FILED

12-9-1976

ORDER DISMISSING MOTION PURSUANT
TO TITLE 28 U.S.C. § 2254

Jack O. Baker, Clerk
U. S. DISTRICT COURT

This is a proceeding brought pursuant to the provisions of Title 28 U.S.C. § 2254, by a state prisoner confined in the Vocational Training Center at Stringtown, Oklahoma. Petitioner attacks the validity of the Judgment and Sentence rendered in the District Court of Tulsa County, State of Oklahoma. In Case No. CRF-71-1842, petitioner was tried and convicted by a jury for the offense of Murder. Punishment was assessed at life imprisonment in the state penitentiary.

Petitioner appealed the Judgment and Sentence to the Oklahoma Court of Criminal Appeals wherein he raised the allegations of error now before the Court. The Oklahoma Court of Criminal Appeals affirmed the Judgment and Sentence. Vavra v. State, 509 P.2d 1379 (Okla. Cr. 1973).

Petitioner demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States. In particular the petitioner claims that:

1. The trial court committed error in allowing the State to endorse witnesses less than 48 hours prior to trial.

2. The trial court committed error in conducting the voir dire examination of the jurors collectively rather than individually.
3. The trial court committed error in excusing for cause jurors who expressed an opposition to the death penalty.
4. The trial court committed error in denying petitioner's timely request for a bifurcated trial.
5. Error was committed in that the prosecuting attorney read the information during voir dire examination.
6. The trial court committed error in allowing the State to describe in its opening statement and to present evidence during the trial matters concerning the petitioner's conduct while in custody at the police station.
7. He was prejudiced in being escorted from the courtroom by an armed uniformed deputy.
8. The trial court committed error in denying petitioner's motion to have juror Hatheway excused for cause.
9. He was denied a fair trial because certain pictures and evidence were in view of the jury without being admitted into evidence.
10. He was denied a fair trial by improper reference to public defender's office by prosecuting attorney.
11. The trial court committed error in admitting the State's exhibits 10 and 11 into evidence for the reason they were designed to inflame the passions of the jury.
12. The trial court committed error in allowing the State's attorney to display bloody pajamas to the jury which pajamas had not been identified or admitted into evidence.
13. The evidence was insufficient to sustain a verdict of guilty.
14. The trial court committed error in refusing to give petitioner's requested instructions.
15. The prosecuting attorney improperly questioned petitioner about his prior convictions.

These allegations do not raise facts which have not been presented in the record. No evidentiary hearing is necessary to resolve the issues raised by the petitioner. Petitioner has presented these allegations of error to the Oklahoma Court of Criminal Appeals and has therefore exhausted his State remedies.

Petitioner alleges that the trial court committed error in allowing the State to endorse witnesses less than 48 hours prior to trial. The United States Constitution does not require that an accused be furnished with the names of prosecution witnesses. United States v. Eagleston, 417 F.2d 11 (10th Cir. 1969). At the time that witness Frank McEniry was endorsed as a witness the petitioner was given an opportunity to request a continuance and failed to so request. (Tr. 14-15). At the time that witness Frank Vincent was endorsed, petitioner made no request for a continuance. (Tr. 648-650). Therefore the petitioner waived any right he may have had to claim prejudice from inability to prepare his case due to late endorsement. No Constitutional claim is raised by this allegation of error.

Petitioner alleges that he was prejudiced by voir dire examination of jurors collectively rather than individually. The question raised here is whether the petitioner was denied the right to an impartial jury. Parson v. Anderson, 354 F.Supp. 1060 (D.Del. 1972) aff'd 481 F.2d 94 (3rd Cir. 1973). There is no fundamental Constitutional right to have prospective jurors examined individually. The Oklahoma Court of Criminal Appeals examined this contention and found no state error. Vavra, 509 P.2d at 1383. Petitioner argues that the jurors when examined collectively would be reluctant to voice an objection to capital punishment. The record does not support this contention in that jurors Carol A. Inman (Tr. 23-25), Lucille Huffman (Tr. 25-26), and Jessie Mae Sims (Tr. 27-28) expressed an objection to the death penalty. The death penalty was not imposed in this case. Petitioner's contention that he was denied an impartial jury

because the jurors were examined collectively is without merit.

Petitioner contends that the trial court committed error in excusing jurors who expressed an opposition to the death penalty. In Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968) the Court stated:

"In Witherspoon v. Illinois, ante, p. 510, we have held that a death sentence cannot constitutionally be executed if imposed by a jury from which have been excluded for a cause those who, without more, are opposed to capital punishment or have conscientious scruples against imposing the death penalty. Our decision in Witherspoon does not govern the present case, because here the jury recommended a sentence of life imprisonment. . . ."

391 U.S. at 545.

Since petitioner received a sentence of life imprisonment this contention is without merit.

Petitioner contends that the trial court erred in denying his request for a bifurcated trial. There is no Federal Constitutional requirement of a two-stage trial for the purpose of determining guilt and punishment in separate proceedings. The State of Oklahoma does not require such a two-stage proceeding in this case. Vavra v. State, supra; Ferrell v. State, 475 P.2d 825 (Okla. 1970); Moore v. State, 462 P.2d 286 (Okla. 1969). Evidence of petitioner's previous convictions was first introduced by the defense. (Tr. 704). The prosecution raised the prior convictions for the purpose of impeachment. (Tr. 740). Petitioner's Fourteenth Amendment right to due process was not violated by the failure of the State to conduct a two-stage trial. This contention is without merit.

Petitioner contends that error was committed when the prosecuting attorney read the Information during voir dire examination. No prejudice resulted from such reading or statement of the Information. The Information was read to the jury after the jury was sworn in conformity with Title 22 Okla. Stat. § 831. (Tr. 241). This contention is without merit.

The petitioner next contends that error was committed when the prosecutor in his opening statement to the jury referred to petitioner's attempt to subdue a police officer at the police

station. (Tr. 251). The Oklahoma Court of Criminal Appeals found no State error in the presentation and instruction regarding flight. Vavra, 509 P.2d at 1384. Matters of evidence and conduct of the trial are generally within the sound discretion of the trial court. Pierce v. Page, 362 F.2d 534 (10th Cir. 1966). The Court has examined the record and finds no Constitutional error in the admission by the trial court of evidence of petitioner's conduct at the police station.

Petitioner next contends that he was escorted from the courtroom by armed uniformed guards who were seen by the jury. No excessive physical restraint was used against the petitioner. In searching the record this Court finds no prejudicial error in the petitioner being escorted by an armed uniformed guard. This contention is without merit.

Petitioner contends that the failure of the trial court to excuse juror Hatheway constitutes reversible error. After extensive evidence had been introduced by the State, Hatheway stated that he knew the witnesses Bob Blackley and Mark Blackley. This juror was thoroughly examined as to any prejudice that might result from his acquaintance with these witnesses. (Tr. 555-564). Juror Hatheway stated that he could return an impartial verdict. (Tr. 561). The acquaintance of this juror with the witnesses was slight in that Hatheway had seen them in the barber shop where Bob Blackley worked but had not spoken to either of the witnesses. (Tr. 556). In reviewing the record regarding the juror Hatheway, it is the conclusion of the Court that no Constitutional error was committed which denied to the petitioner his right to a fair and impartial trial.

Petitioner contends that certain photographs were seen by the jury prior to being admitted as evidence. (Allegation of Error #9). Petitioner also contends that error was committed when the trial court admitted exhibits 10 & 11 which he asserts are gruesome photographs designed to inflame the jury. (Allegation

of Error #11). Petitioner also alleges error in allowing the introduction into evidence of a pair of bloody pajamas. (Allegation of Error #12). The Court has examined the record in regard to each of these allegations and finds that no prejudice resulted from the introduction of the photographs and pajamas. The Oklahoma Court of Criminal Appeals found that the jury did not see any evidence prior to its introduction. Vavra, 509 P.2d at 1385. The record shows that an objection was made by defense counsel to the flashing of photographs. (Tr. 593). The trial court admonished the prosecutor not to flash the photographs. In reviewing the entire record it is the conclusion of the Court that no Federal Constitutional error was committed by the trial court in failing to declare a mistrial because of what the jury may have seen. The conduct of the trial and the admission of evidence is generally within the discretion of the trial court. Trujillo v. Tinsley, 333 F.2d 185 (10th Cir. 1964); Carillo v. United States, 332 F.2d 202 (10th Cir. 1964); Bizup v. Tinsley, 316 F.2d 284 (10th Cir. 1963). Unless the trial is conducted in a manner which denies due process or evidence is so inflammatory that its prejudicial effect outweighs its probative value this Court is not empowered to grant relief on these questions under Title 28 U.S.C. § 2254. Petitioner was not denied a fair or impartial trial under the allegations of error nos. 9, 11 and 12.

Petitioner contends that the reference by the prosecuting attorney to the public defender's office constitutes error. The prosecutor asked the jury if any of them knew a witness who was working for the public defender's office. (Tr. 70). No statement was made that petitioner was represented by a public defender. No error was committed by this statement.

Petitioner asserts that the evidence does not support a verdict of guilty. Sufficiency of evidence to support a state conviction raises no Federal Constitutional question which is recognized under § 2254. Sinclair v. Turner, 447 F.2d 1158 (10th


Cir. 1971). Petitioner was not denied a federal Constitutional right under this claim.

Petitioner contends that the trial court improperly instructed the jury. State error in instructing the jury is not cognizable under federal habeas corpus proceeding unless such error is fundamentally unfair. Young v. Anderson, 513 F.2d 969 (10th Cir. 1975); Linebarger v. State, 404 F.2d 1092 (10th Cir. 1968) cert. denied, 394 U.S. 938, 89 S.Ct. 1218, 22 L.Ed.2d 470 (1969). The Court has reviewed the instructions given in this case and finds no fundamental Constitutional error.

Finally petitioner contends that the cross-examination of the petitioner in regard to his prior convictions was error. A defendant may be examined on his prior convictions for the purpose of impeaching his testimony. Loper v. Beto, 405 U.S. 473, 31 L.Ed.2d 374, 92 S.Ct. 1014 (1972). The petitioner testified and was cross-examined on his prior criminal convictions for the purpose of impeachment. Such cross-examination did not violate the Federal Constitution.

After carefully examining all of the propositions of error raised by the petitioner and reviewing the entire record as it pertains to these propositions it is the conclusion of the Court that petitioner's Fifth, Sixth, Eighth and Fourteenth Amendment rights were preserved in the criminal proceedings conducted by the State of Oklahoma and that the Motion of petitioner for Habeas Corpus relief pursuant to Title 28 U.S.C. § 2254 is denied and dismissed.

It is so Ordered this 9th day of September, 1976.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL M. SAMARA, Trustee for
LaBelle Tape Sales, Inc., a
corporation,

Plaintiff,

v.

WALGREEN COMPANY, an Illinois
corporation,

Defendant.

No. 75-C-395-B ✓

FILED

SEP 9 1976

Jack C. Silver, Clerk
U S DISTRICT COURT

ORDER OF DISMISSAL

On this 9th day of September, 1976, comes on for consideration the Stipulation for Dismissal of the plaintiff and defendant herein in the above entitled cause. The Court finds that said cause has been settled and that defendant has this date paid to plaintiff the sum of \$50,000.00 in full settlement, release and satisfaction of plaintiff's cause of action set forth in the complaint herein, and that plaintiff has accepted said sum in full satisfaction, release and discharge of its cause of action and claim against the defendant and further that by stipulation the defendant has dismissed with prejudice its counterclaim against the plaintiff and the Court after due consideration finds that said dismissal should be approved.

IT IS THEREFORE ORDERED that this cause be, and the same is, hereby dismissed with prejudice, each party to bear its own costs.

APPROVED AS TO FORM:

Celestine E. Banow
UNITED STATES DISTRICT JUDGE

Thomas R. Brett
THOMAS R. BRETT, Attorney for Plaintiff

Irvine E. Ungerman
Irvine E. Ungerman, Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

IN RE:

SEP 9 1976

PALIZZIO, INC., Anti-Trust
Litigation, MDL #233

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FACTORY OUTLET SHOES OF)
SOUTHROADS, INC., a Corporation,)
)
Plaintiff,)
)
vs.)
)
PALIZZIO, INC., a Corporation,)
)
Defendant.)

Civil Action No. 74-C-155
(U.S.D.C. ND Oklahoma)

FACTORY OUTLET SHOES OF)
OKLAHOMA, INC. a Corporation,)
)
Plaintiff,)
)
vs.)
)
PALIZZIO, INC., a Corporation,)
)
Defendant.)

No. 75-C-323
(U.S.D.C. ND Oklahoma)

FACTORY OUTLET SHOES OF)
GEORGIA, INC., a Corporation,)
)
Plaintiff,)
)
vs.)
)
PALIZZIO, INC., a Corporation,)
)
Defendant.)

76-C-40
No. C-75-1455A
(U.S.D.C. ND Georgia)

FACTORY OUTLET SHOES OF)
LAKESIDE, INC. a Corporation,)
)
Plaintiff,)
)
vs.)
)
PALIZZIO, INC., a Corporation,)
)
Defendant.)

76-C-42
No. C-75-2331 (Section I)
(U.S.D.C. ED Louisiana,
New Orleans Division)


FACTORY OUTLET SHOES OF)
NEW ORLEANS, INC. a Corporation,)
)
Plaintiff,)
)
vs.)
)
PALIZZIO, INC., a Corporation,)
)
Defendant.)

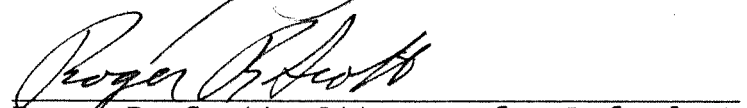
76-C-41
No. C-75-2330
(U.S.D.C. ED Louisiana,
New Orleans Division)

STIPULATION FOR DISMISSAL

COMES NOW the Attorney for the Plaintiffs in the captioned causes and the Attorney for the Defendant in all said cases and the same hereby stipulate and agree that the foregoing cases all as consolidated under MDL No. 233, be dismissed without prejudice to the rights of the Plaintiffs to refile the same. The undersigned represent to the Court that all of the parties have settled their differences in this matter and that mutual releases and settlement documents have been executed. The undersigned further represent to this Court that prior to the end of calendar year of 1976, a Stipulation for Dismissal with Prejudice will be presented to this Court.

WHEREFORE, the undersigned respectfully requests that the captioned causes be dismissed without prejudice to the rights of the Plaintiffs to refile the same.


Irvine E. Ungerman, Attorney for
Plaintiffs



Roger R. Scott, Attorney for Defendant

O R D E R

This matter comes on for consideration pursuant to the Stipulation for Dismissal filed by the parties herein and the Court being advised in the premises, finds that said cases should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the foregoing cases be and the same are hereby dismissed without prejudice to the rights of the respective Plaintiffs to refile the same.

DATED this 9th day of September, 1976.


H. Dale Cook
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MERCURY MORTGAGE CO., INC.)
)
 Plaintiff,)
)
vs.)
)
THE HOME INSURANCE COMPANY,)
of Manchester, New Hampshire,)
)
 Defendant.)

NO. 76-C-349 -C ✓

FILED


SEP 8 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

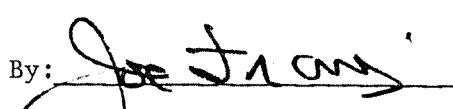
ORDER OF DISMISSAL

ON this 8th day of August, 1976, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, find that said Complaint should be dismissed pursuant to said application.

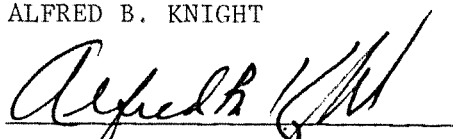
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.


JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

JOE FRANCIS

By: 
Attorney for Plaintiff,

ALFRED B. KNIGHT


Attorney for the Defendant.

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

SEP 8 1976 *lm*

HERBERT CROOK, Receiver of Liberty
Universal Insurance Company,)

Plaintiff,)

vs)

SAM BOOKMAN, an individual, d/b/a)
S. BOOKMAN & ASSOCIATES, and)
S. BOOKMAN & ASSOCIATES, INC., a)
corporation,)

Defendants.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No 74-C-440-CV ✓

Stipulation of
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Herbert Crook, Receiver of
Liberty Universal Insurance Company, and pursuant to an
agreement of the parties hereto dismisses the above styled
cause of action with prejudice.

Herbert Crook
HERBERT CROOK, Receiver of
Liberty Universal Insurance Company

[Signature]
RAINEY, WALLACE, ROSS & COOPER
By: HUGH D. RICE, Attorney for
Plaintiff, Herbert Crook, Re-
ceiver of Liberty Universal
Insurance Company
735 First National Center West
Oklahoma City, Oklahoma 73102

[Signature]
SAM BOOKMAN, an individual d/b/a
S. BOOKMAN & ASSOCIATES

ATTEST AND SEAL

[Signature]
Secretary

[Signature]
S. BOOKMAN & ASSOCIATES, INC.
By: Sam Bookman, President

[Signature]
SCHUMAN, MILSTEN & JACKSON
By: DAVID W. JACKSON, Attorney for
Defendants.
The Tower Suite, Philtower Building
Tulsa, Oklahoma 74103

FILED

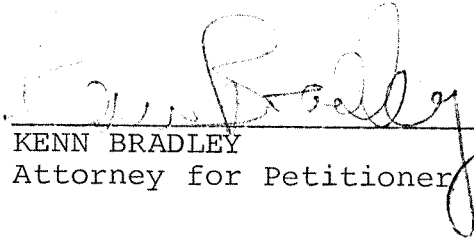
SEP 8 1976

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
Jack C. Silver, Clerk
U. S. DISTRICT COURT

NEVA RAYE PERRY,)
)
Petitioner,)
)
vs.) NO. 76 C 368
)
SHERIFF OF TULSA COUNTY,)
)
Respondent.)

NOTICE OF DISMISSAL

COMES NOW the petitioner above named and hereby gives notice of dismissal of the above application for Writ of Habeas Corpus for the reason and on the grounds that same is moot and requests that said matter be dismissed upon the filing of this application.


KINN BRADLEY
Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE ESTATE OF
JIMMIE D. McCONNELL, DECEASED,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 75-C-493-B

FILED

SEP 7 1976

O R D E R

Jack C. Young, Clerk
U. S. DISTRICT COURT

NOW on this 7th day of September, 1976, there

came on for consideration the Plaintiff's Dismissal With
Prejudice, this matter having been concluded by compromise
stipulation earlier on. The Court finds this case should be
dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED
that this ^{*cause of and complaint are*} action, be and the same ~~is~~ hereby dismissed with
prejudice.

Allen E. Bennett
UNITED STATES DISTRICT JUDGE

FILED
IN OPEN COURT

SEP - 7 1976

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver
Clerk, U. S. District Court

HAROLD W. BROOKS, et al.,

Plaintiffs,

vs.

JAMES E. SEASHOLTZ, et al.,

Defendants.

)
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74-C-293-B

JUDGMENT

Based on the order entered this date, IT IS ORDERED that Judgment be entered in favor of the plaintiffs and against the defendants, James E. Seaholtz and Ira J. Seasholtz, in the sum of \$180,000.00, plus interest at 6% from this date, with an attorney fee of \$18,000.00 and costs of this action.

ENTERED this 7th day of September, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE A. H. ROBINS CO., INC. "DALKON SHIELD" IUD PRODUCTS
LIABILITY LITIGATION

AUG 13 1976

PATRICIA D. HOWARD
CLERK OF THE PANELKathleen McLaughlin v. A. H. Robins Co., Inc.
N.D. Oklahoma, Civil Action No. 76-C-371 ✓

CONDITIONAL TRANSFER ORDER

76-378-66

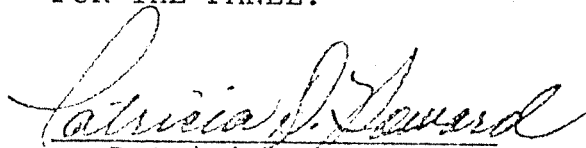
On December 8, 1975, after notice and hearing the Panel transferred 53 related civil actions to the United States District Court for the District of Kansas for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time more than 150 additional actions have been transferred to the District of Kansas. With the consent of that court, all such actions have been assigned to the Honorable Frank G. Theis.

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the District of Kansas and assigned to Judge Theis.

Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 65 F.R.D. 253 (1975), the above-captioned tag-along action is hereby transferred on the basis of the opinion and order of December 8, 1975, 406 F. Supp. 540, and with the consent of that court assigned to the Honorable Frank G. Theis.

This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the District of Kansas. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:



Patricia D. Howard
Clerk of the Panel

No objection having been received
during the stay period, the
stay was lifted and this order
became effective on

AUG 30 1976

Patricia D. Howard
Clerk of the Panel

FILED

SEP 2 1976

ARTHUR G. JOHNSON, Clerk

By Heaven Hope Deputy

THIS IS A TRUE COPY

ATTEST

Ch. Deputy Clerk
Patricia D. Howard
Clerk, Judicial Panel on
Multidistrict Litigation

FILED

SEP 7 1976

Jack C. Silver, Clerk
DISTRICT COURT

FILED

SEP 1 1976

CIVIL ACTION NO.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

76-C-270-B-

76-C-270-B COURT

76-C-270-B-

76-C-270-B COURT

76-C-270-B-

76-C-270-B COURT

76-C-270-B-

cl

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

WASHINGTON NATIONAL INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
EUGENE D. ABBOTT,)
)
Defendant.)

No. Civ. No. 76-C-401(c)


FILED

SEP 2 1976

Notice of
DISMISSAL WITH PREJUDICE

Jack C. Silver, Clerk
U. S. DISTRICT COURT

COMES NOW the plaintiff, and, having compromised its differences with the defendant, dismisses this action with prejudice.


David B. McKinney
OF BOESCHE, McDERMOTT & ESKRIDGE
1300 NBT Building
Tulsa, OK 74103
(918) 583-1777

ATTORNEYS FOR THE PLAINTIFF,
WASHINGTON NATIONAL INSURANCE
COMPANY

CERTIFICATE

I mailed a copy of this Dismissal to G. Waide Sibley,
attorney for defendant, on the 2ND day of September, 1976,
with first class postage prepaid.



IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MR. ACCOUNTABILITY BURNS
BOX 1004, 74101 (Tulsa)

Plaintiff,

vs.

TULSA COUNTY ELECTION BD, INDIVIDUALLY
(3 members) & CLERK HARMON MOORE,

Defendants.

No. 76-C-384-C ✓

FILED

AUG 31 1976 km

O R D E R

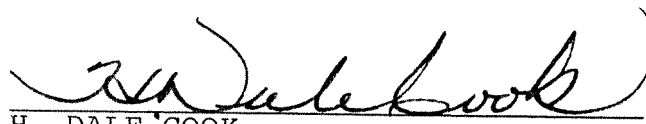
Jack G. Silver, Clerk
U. S. DISTRICT COURT

The Court has before it for consideration a Motion to Dismiss filed by the defendants herein. The Court has read the Complaint and Amended Complaint filed pro se by the plaintiff Mr. Accountability Burns, and has attempted to ascertain the nature of his Complaint against the named defendants, Tulsa County Election Board, individually and Clerk Harmon Moore.

Plaintiff appears to contest the actions of the Tulsa County Election Board in failing to include plaintiff's name on an election ballot. Plaintiff's Complaint does not include a jurisdictional statement and it would appear that this Court lacks jurisdiction to adjudicate allegations of irregularities in conduct of the Tulsa County Election Board. In addition, it would appear that plaintiff has failed to exhaust the administrative remedies available to him.

It is the determination of the Court that plaintiff has failed to state a cause of action over which this Court has jurisdiction and defendants' Motion to Dismiss is therefore hereby sustained.

It is so Ordered this 31st day of August, 1976.



H. DALE COOK
United States District Judge